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Alberta
GOVERNMENT PENSION BOARDS

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February 1991

The Honourable Dick Johnston
Provincial Treasurer

Sir:

I have the honour to submit to you the annual report of the Special Forces Pension Plan Board for the period January 1, 1989 to December 31, 1989. The report outlines the roles and responsibilities of the Special Forces Pension Plan Board under the legislation governing the plan.

Board activities, during the period under review, with respect to its appellate and advisory roles are described in the report.

Yours truly,

J. E. Faries, FCIS, PAdm.
Chairman

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INTRODUCTION

The calendar year 1989 is the fourth full year of operation of the Special Forces Pension Plan Board in its current role. This Board was established effective November 1, 1985 under the Special Forces Pension Plan Act and currently (as at December 31, 1989) covers 2,563 active participants and 430 pensions in payment. The main responsibilities of the Board are to hear appeals of administrative decisions made on pensions and to advise the Minister responsible for public service pensions on matters relating to the Plan.

The Honourable Dick Johnston, Provincial Treasurer, is the Minister responsible for public service pensions. The Plan is administered by Alberta Treasury, Payroll and Pensions Division.

The Board is made up of five members appointed by the Lieutenant Governor in Council representing employees, employers and the Government.

A description of the Board's appeliate role is provided and a cross-section of appeals is included.

The Special Forces Pension Plan Board has continued to provide advice to the Minister. The areas of discussion have been wide ranging and in many cases are ongoing. A brief summary of issues and recommendations is included in this report.

CHAIRMAN'S REPORT

During 1989, the Special Forces Pension Plan Board met five times considering three appeals and several policy items.

The appeals, reported elsewhere in this report, dealt with two issues, disability benefit and the purchase of prior service. In each case the members appeared, in two cases with a solicitor. This indicates that members feel free, in light of the procedures established, to appear to present their cases. The Board has remained stable during the year and no changes were experienced.

The goals of the Board continue to be to see that justice is provided for plan members, and that the plan is protected and remains sound. The Board considers its responsibility to be to plan members, the employees, the employers and government to ensure that all parties are dealt with fairly.

A case dealing with disability was returned to the Board for a rehearing. The Court of Queen's Bench Justice determined that the Board erred in defining the term "gainful employment". The position taken by the Board, in its view, was too narrow. Appeal #2 in the report provides the details of the rehearing. The original appeal was reported in the 1987 annual report.

In its advisory capacity, the Board considered and dealt with several important issues. Three issues listed were the actuarial report findings, plan modification and the role of the Board. Several members of the Board continue to be concerned because of the ineffectiveness of the Boards' advisory role. Members continue to consider that the Board should be responsible for policy and determination of the fund viability of the plan.

THE BOARD

The Special Forces Pension Plan Board is a representative Board covering members, the employers and the Government. In addition to the Chairman, there are two members each representing the employee and employer groups and one member representing the government.

Members

J. E. Faries

Mr. Jerry Faries, Chairman of the Board, brings considerable background in pension policy and administration. He served over 15 years as Director of the Pension Administration. Mr. Faries was chairman and instructor for the Employee Benefit Administration Certificate program of the University of Alberta for a number of years. Currently he holds several senior positions on other boards and community organizations. His term of office expires on April 1, 1992.

A. F. (Chip) Collins

Mr. Collins, the government representative, is Vice-Chairman of the Board. He served as Deputy Provincial Treasurer from 1972 until his retirement in 1984. Mr. Collins brings to the Board extensive financial, administrative, and senior public service experience. His term of office expires on April 1, 1991.

M. P. Dungey

Mr. Michael Dungey joined the Calgary Police Service in 1971 and since that time his police work has been in many areas. Currently he is a staff sergeant on a leave of absence as President of the Calgary Police Association. Mr. Dungey has served as President of the Alberta Police Federation since May 1987. His term of office expires on April 1, 1992.

G. Hopman

Mr. Gerry Hopman held various posts with the City of Lethbridge since 1958 before assuming his current position as Director of Human Resources. He is a sessional instructor at the University of Lethbridge School of Management and Lethbridge Community College. Mr. Hopman also serves on the AUMA Labour Relations Advisory Committee, and is Chairman of the Human Resources Advisory Committee at the University of Lethbridge School of Management. His term of office expires on April 1, 1991.

N. E. Koch

Mr. Norman Koch served with the Royal Canadian Mounted Police from 1951 to 1955. He then joined the Edmonton City Police, and served till his retirement in 1983. Mr. Koch has been involved in police union activities, serving as President of the Edmonton Police Association and President of the Alberta Federation of Police Association. He is currently business manager of the Edmonton Police Association. His term of office expires on April 1, 1991.

A. J. Habstritt

Mr. Allan Habstritt was appointed to the Board in April 1988. He holds a CMA designation and is a graduate of the Banff School of Advanced Management. Mr. Habstritt joined the City of Calgary in 1968 and has held his current position of City Treasurer/Director of Finance since 1986. He is a member of several other boards and is active in a number of financial planning associations. His term of office expires on April 1, 1992.

SUMMARY OF APPEALS

Provisions

The Act provides that any decision of the Minister which adversely affects the right of a member under the pension plan can be appealed to the Board with respect to the following:

Participation	Contributions
Pensionable Service	Prior Service
Benefits	

Provisions of the Act dealing with applications and appeals, Sections 10 and 35 respectively, are reproduced for ease of reference in Appendix A.

Parties aggrieved by a decision of the Board may appeal to the Court of Queen's Bench under Section 36 of the Act. Appeals to the Court of Queen's Bench may be made only on a question of law or jurisdiction. Such appeals must be made within 30 days.

Applications may also be made to the Board for extension of time limits under the reciprocal agreement with the Local Authorities Pension Plan. The following time limits apply under the agreement; that the break in contributory service must be no more than three months, and that application for transfer must be made within one year of commencing contributions with the new employer. The Board considers extenuating circumstances put forth by the applicant in making its decision.

Procedure

A Notice of Appeal form, prescribed by the Minister, is normally provided with adverse administrative decisions. This form must be completed and submitted in filing an appeal. It may also be used for applications for time limit extensions.

Assistance to appellants is available from the Chairman's office. The individual may seek advice on what facts should be gathered and how they should be presented. A copy of the "Pension Appeal Process" brochure is available from the Chairman's office.

Though hearings are conducted in an informal manner, the Board adheres to the principles of natural justice and the duty to be fair.

To ensure that appellants and applicants have an opportunity to present their cases, the Chairman is authorized to reimburse them for reasonable travel and subsistence expenses incurred in attending hearings.

Summary of Appeals and Applications (1989) - Special Forces Pension Plan Board

During 1989 the Special Forces Pension Plan Board met 5 times and decided on 3 appeals. During 1988, the Board met 3 times and decided on 1 appeal.

The Board granted or varied 33% of the appeals in 1989 and 0% of the appeals in 1988. In 1989, 100% of the appellants/applicants or their representatives attended their hearings before the Board. This compares to 100% in 1988.

Summary of Appeals/Applications for 1989 with comparative figures for 1988 - SFPP

	1989			1988		
Category	#	% of Total	% Granted or Varied	#	% of Total	% Granted or Varied
Reciprocal Transfer	0	---	---	0	---	---
Time Limit Extensions (Section 10)	0	---	---	0	---	---
Appeals (Section 35)	3	100%	33%	1	100%	0%
TOTAL	3	100%	33%	1	100%	0%

Summary of the number of cases where an appeal/application was filed but the case did not require a hearing by the Board; appeal provision was relied upon to facilitate a resolution.

1989 - 1
1988 - 1
1987 - 1

Summary of Appeals and Applications (1989) All Boards

During 1989, 76 appeals/applications were heard by the five Pension Boards. This compares to 58 heard during the calendar year 1988.

A. Summary by type of appeal/application. Also shown is the percentage in each type. Comparative figures for 1988 are included.

	1989		1988	
Type of Hearing	Number	% of Total	Number	% of Total
Appeals (Section 35)*	36	47	36	62
Applications Section 10	16	21	3	5
Applications (Reciprocal Agreements)	24	32	19	33
TOTAL	76	100	58	100

* Section 34 for UAPP

B. Number of Appeals/Applications filed but not heard.

Summary of number of cases granted by Payroll and Pensions and/or withdrawn by appellants prior to being heard by the Board is as follows:

Board	1989	1988	1987
PSPP	2	5	3
LAPP	3	10	10
PSMPP	1	1	1
UAPP	1	2	0
SFPP	1	1	1
TOTAL	8	19	15

C. Attendance at Hearings (by appellant and/or representative):

BOARD	1989	1988	1987
PSPP	79%	65%	75%
LAPP	54%	70%	64%
PSMPP	75%	100%	90%
UAPP	60%	80%	83%
SFPP	100%	100%	100%

D. Number of Appeals and Applications heard by the Boards

	Applications		Appeals	Total
	Reciprocal Transfer	Section 10	Section 35*	
LAPP	13	4	18	35
PSPP	10	7	7	24
PSMPP	0	0	4	4
UAPP	1	5	4	10
SFPP	-	-	3	3
TOTAL	24	16	36	76

* Section 34 for UAPP

E. Percentage of Appeals and Applications Granted or Varied

	Applications		Appeals	Total
	Reciprocal Transfer	Section 10	Section 35*	
LAPP	77%	100%	67%	74%
PSPP	60%	100%	29%	63%
PSMPP	-	-	50%	50%
UAPP	100%	80%	100%	90%
SFPP	-	-	33%	33%
Combined	71%	94%	58%	70%

* Section 34 for UAPP

F. Applications for Reciprocal Transfers (Time Limit Extensions)

	Exporting Plans							
Importing Plans	LAPP	PSPP	PSMPP	UAPP	SFPP	TRF	OTHER	TOTAL
LAPP	xx	8	1	-	-	2	2	13
PSPP	6	xx	-	-	-	3	1	10
PSMPP	-	-	xx	-	-	-	-	-
UAPP	1	-	-	xx	-	-	-	1
SFPP	-	-	-	-	xx	-	-	-
TOTAL	7	8	1	-	-	5	3	24

Appeal #1

Disability Pension

The appellant appealed the Minister's decision not to grant a total disability pension due to injury on the job. The appellant argued that she was totally disabled and was entitled to a pension under the Special Forces Pension Plan. Reference was made to various medical reports to support her position and in particular to the family physician's report. The appellant argued that due to her limitations - inability to sit or stand for long periods, education and training, it was very difficult for her to find employment.

The Minister identified the issue before the Board as whether or not the appellant was currently disabled. He argued that based on medical reports, there was indication that the original injury had healed. He referred to their medical consultant's assessment which stated that the appellant "may be able to undertake alternate employment". Reports provided by appellant's physician indicated that appellant could undertake "sedentary non-exertional" employment. To sum up the Minister urged the Board to note that there was no psychological report produced in this case and the only medical evidence supporting a total disability came from the appellant's family doctor whereas the specialists disputed that finding.

The Board reviewed the judgement from the Court of Queen's Bench on a previous case and noted in particular the direction from the Justice relating to the Minister's primary burden to show, on a balance of probabilities, no capacity for gainful employment and alternatively to show affirmatively some other occupations for which the appellant is qualified and capable.

After considering all the medical evidence and the information provided at the hearing, the Board denied the appeal on the basis that the appellant had not satisfied the Board that she was totally disabled with no capacity for gainful employment, commensurable to her experience, training, qualifications and capabilities.

Appeal #2

Total Disability

In October 1987, the Board considered an appeal filed against the Minister's decision to grant a partial disability pension. The Board confirmed the Minister's decision. The decision was appealed to the Court of Queen's Bench. In his judgement of October 1988 Justice Murray remitted the matter back to the Board for a hearing de nova.

In July 1989, the Board heard the appeal. At the two-day hearing the Board received submissions from respective solicitors for the appellant and the Minister, and heard testimonies from witnesses, including the appellant, medical specialists and psychologist. Based on Justice Murray's criteria in assessing incapacity for gainful employment, the Board examined the appellant's experience, training, qualifications and capabilities. On completing its deliberation, the Board confirmed the Minister's decision to grant a partial disability pension. The appellant again appealed to the Court of Queen's Bench. Justice Berger vacated the Board's decision on January 15, 1990 and ruled that the appellant should receive a total disability pension because of total incapacity for gainful employment. The Minister is now appealing the Court of Queen's Bench decision to the Alberta Court of Appeal. This appeal was due to be heard before the end of 1990.

Appeal #3

Prior Service (same employer)

The Special Forces Pension Plan (SFPP) Board considered an appeal with respect to the reinstatement of a period of previous employment with the police service of a Municipality while a participant under the Local Authorities Pension Plan (LAPP). The appellant terminated employment and elected to have contributions refunded. He was later re-employed with the police service and requested that the service be reinstated. The appellant was asked to contribute an amount equal to 12% of historical salary plus interest.

The appellant argued that there was provision under the Local Authorities Pension Act for reinstatement by repaying the refunded contributions plus interest. He believed that this provision should be binding. He stressed that he returned to the same employer in the same capacity but had no control over the fact that the pension legislation was changed from LAPP to SFPP. The Minister refused the request to re-instate the service.

The Minister argued that the appellant's application was dealt with correctly in accordance with the relevant section of the regulation. However, by virtue of the fact that the Minister has no discretion to deal with this type of service in any other ways, the Board did not have the authority either.

The Board varied the Minister's decision and permitted the appellant to establish his service for the purpose of the SFPP Act by the payment 12% of contributions on his historical salary plus plan interest less the amount of employer contributions made under the LAPP and plan interest credited to the employer contributions. The decision was based on the following reasons:

1. There is provision for the continuance of the former plan in the legislation and the LAPP is included in the "former plan" by virtue of being replaced by the plan under the Act.

2. Benefit legislation should always be interpreted as being remedial in nature.

3. The appellant returned to the same job with the same employer and would have been able to re-instate the period of service had the plan not changed from the LA to the SFPP.

4. The SFPP provides better benefits than the LAPP and the member should be allowed to establish the service at an appropriate contribution rate to "upgrade" the LAPP service to provide benefits under the SFPP.

The Minister has appealed the Board's decision.

ADVICE

The Board has provided advice in respect of a number of issues affecting the Plan. These are outlined below together with the Board's recommendations.

Actuarial Assumptions and Current Service Cost

Pursuant to the results of the 1988 actuarial valuation of the Special Forces Pension Plan, and based on independent actuarial advice, the Board continued to express concern about the "conservativeness" of the actuarial assumptions and method used. On behalf of this and other Boards, the Chairman wrote the Minister in May 1989, requesting an independent actuarial valuation based on alternate assumptions and methods. The Minister declined the Board's request in July 1989.

In June 1989 the Board requested that the Chairman obtain a costing from an actuary based on alternate assumptions and methods. After reviewing the report in order to generate further discussion with the Minister, the Board forwarded the same to the Minister on October 17, 1989.

Potential Service

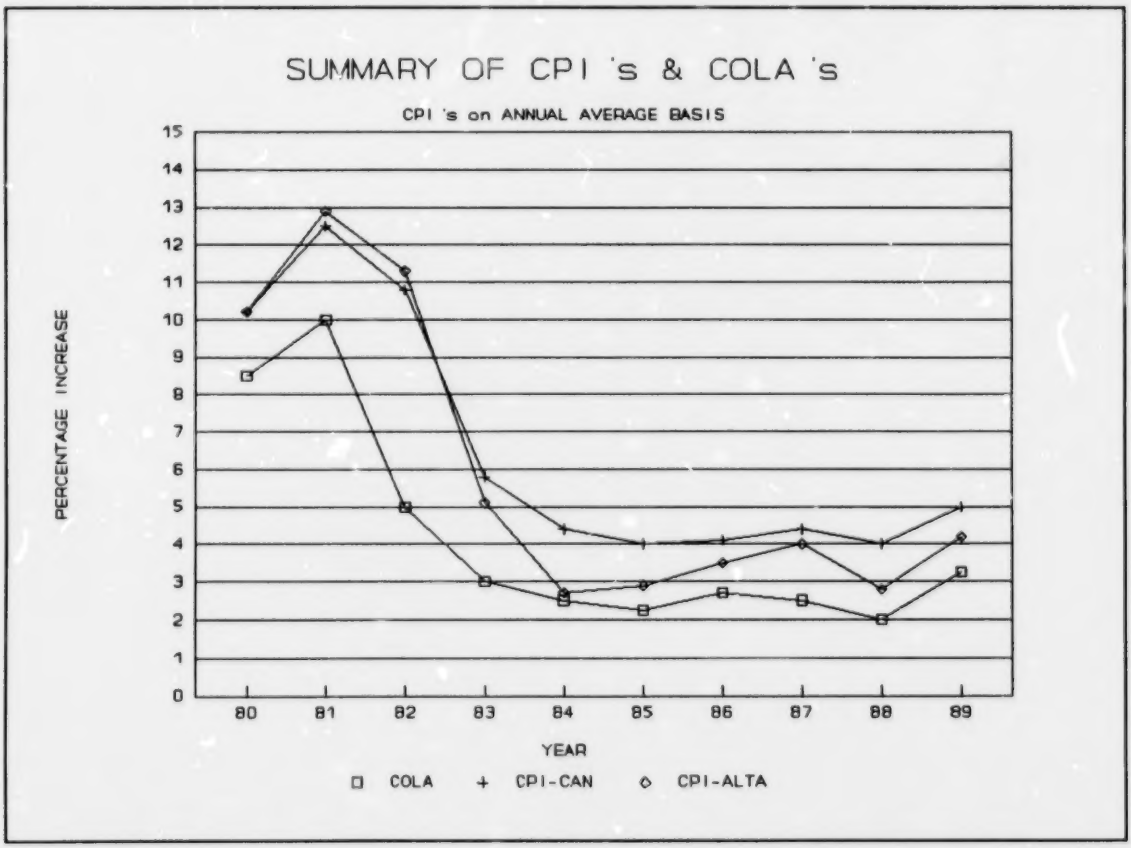
At the March 1989 meeting, the Board agreed in principle that potential service is no longer necessary under the Pension Plan to increase pensionable service in cases of deaths in service and total disability. This item was again reviewed in June following a discussion paper prepared by the Chairman's Office. The Board reiterated that potential service be removed. The item was not finalized during the period under review.

Proposed Federal Legislation on Retirement Savings

Arising out of the results of the 1988 Actuarial Valuation, the Board reviewed a paper, prepared by the Chairman's Office in March, on the impact of the proposed Federal tax legislation on the SFPP. It was noted that implementation of the proposed changes had been deferred.

Cost of Living Adjustments to Pensions

Cost of living adjustments (COLA) to pensions and deferred pensions are granted on an ad hoc basis by the Government. In November 1989 the Board recommended that COLA of 3.9% be granted effective January 1, 1990. The adjustment granted by the Lieutenant Governor in Council was 3.25%.



The graph above shows the COLA's granted on January 1 following the years 1980 through 1989, i.e. the COLA of 3.25% shown for 1989 was granted on January 1, 1990. The Consumer Price Index (CPI) increases are for the calendar years, i.e. CPI-CAN shown for 1980 is the 10.2% increase which occurred in 1980. During the 10-year period the average annual increases were as follows: Canada CPI - 6.5%, Alberta CPI - 5.9%, COLA's granted - 4.1%.

APPENDIX A

Excerpts from the Act

The following excerpts of the Special Forces Pension Plan Act define the make-up and responsibilities of the Special Forces Pension Plan Board.

Establishment, composition, term of office, etc.

5(1) There is hereby established a board known as the Special Forces Pension Plan Board.

(2) The Board shall consist of not fewer than 5 persons appointed members of the Board by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council shall appoint 1 of the members of the Board from among participants and another from among persons nominated by the employers.

(4) A member of the Board holds office for the term fixed in relation to him by the Lieutenant Governor in Council.

(5) The Minister may prescribe the remuneration and expenses to be paid to members of the Board.

(6) The Board may make rules respecting the calling of and the conduct of business at its meetings.

Chairman and vice-Chairman

6(1) The Lieutenant Governor in Council shall designate one of the members of the Board to be the chairman and another member to be the vice-chairman of the Board.

(2) The vice-chairman shall act as chairman when the office of chairman is vacant or when the chairman is absent or unable to act.

Support services

7 The Minister shall provide such supplies, services and accommodation as he considers necessary to enable the Board to fulfil its objects.

Objects of the Board

8 The objects of the Board are

(a) to conduct the hearing of appeals under Part 6;

(b) to provide advice to the Minister under section 9;

(c) *where appropriate, to extend time limits and treat benefit choices as revoked under section 10;*

(d) *to exercise and perform any other powers and duties assigned to it by this Act and the regulations;*

(e) *to perform any other duties relating to the Plan that are assigned to it by the Minister.*

Advisory functions of the Board

9 *The Board may advise the Minister respecting any matters relating to the Plan, including*

(a) *the adequacy of contributions to meet benefits,*

(b) *adjustments to pensions under section 27,*

(c) *rates of interest for the purposes of the Plan,*

(d) *benefits,*

(e) *reciprocal agreements,*

(f) *recognition of prior service,*

(g) *eligibility and participation in the Plan, and*

(h) *the actuarial tables prescribed or to be prescribed by the Minister.*

Board's power to extend time limits, etc.

10(1) *Where*

(a) *a person fails to meet a time limit under the Plan,*

(b) *the failure will or could result in a person's obtaining different benefits than those he would have obtained had the time limit been met, and*

(c) *the Board is satisfied that the failure results from circumstances that import no material fault on the part of that person,*

the Board may, on application to it, extend the time limit.

(2) Where

(a) the circumstances set out in subsection (1)(a), (b) and (c) apply,

(b) the benefit has been received or has commenced to be paid, and

(c) the Board is satisfied that a choice, including a deemed choice, that would otherwise be irrevocable under section 40(2) could materially prejudice the best interests of the recipient or his dependants,

the Board may, on application to it, treat that choice as revoked, extend the time limit for making the choice and order any consequential adjustments in the benefits.

(3) Where

(a) a benefit choice has been made, and

(b) the Board is satisfied that

(i) the choice communicated to the Minister was not that which the person making the choice actually intended, and

(ii) the application mentioned in this section does not result from a change in a person's circumstances affecting the choice,

the Board may, on application made to it within 3 months from the date when the benefit was received or commenced to be paid, treat the choice as revoked, substitute for it the choice that, in the Board's opinion, the person originally intended to make and order any consequential adjustments in the benefits.

Appeal to the Board

35(1) A party aggrieved by a decision of the Minister under or in relation to Parts 2 to 5 or the prescribed provisions of the regulations, other than a decision under section 32 or one that could be the subject-matter of an application under section 10, may appeal against that decision to the Board.

(2) *A party wishing to appeal to the Board under this section must serve the chairman of the Board with a notice of appeal in the form prescribed by the Minister within 30 days of being notified in writing of the decision appealed against or within such longer period as the Board may, on application, allow.*

(3) *The notice of appeal must specify the decision appealed against and the grounds of appeal.*

(4) *The Board may identify persons who may be interested in the appeal and may give directions as to the persons to be served with the notice of appeal, whether or not they are parties.*

(5) *For the purposes of conducting an appeal under this section, the Board*

(a) *has all of the duties, powers, privileges and immunities given to a commissioner appointed under the Public Inquiries Act by sections 3, 4, 7 and 9 of that Act, and*

(b) *shall be deemed to be a person for the purposes of section 1(a) of the Administrative Procedures Act.*

(6) *The Board may confirm, vacate or vary the decision appealed against.*

(7) *The Board shall serve the appellant and persons who received a notice of appeal with a copy of its decision, including the reasons for the decision.*

Appeal to the Court of Queen's Bench

36(1) *A party aggrieved by a decision of the Board under section 35 may, within 30 days of the date of service of the Board's decision on him or such longer period as the Court may allow, appeal to the Court of Queen's Bench on a question of law or jurisdiction.*

(2) *The procedure in an appeal to the Court of Queen's Bench shall be the same as that provided in the Alberta Rules of Court for applications by originating notice.*

(3) *The Court of Queen's Bench, on hearing the appeal, may confirm, vacate or vary the decision of the Board or make any order it considers just.*

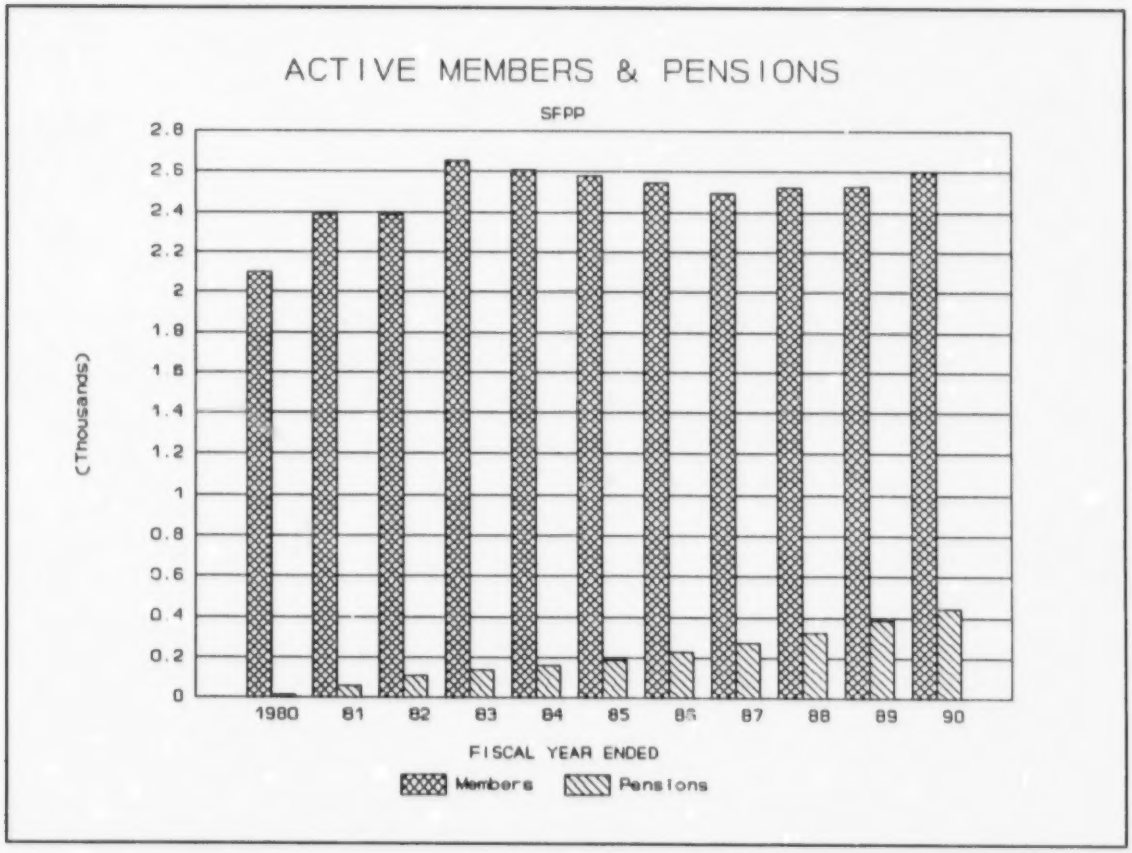
APPENDIX B

Summary of Plan Statistics

Statistics are provided by Payroll and Pensions Division of Alberta Treasury and interpreted by the Alberta Government Pension Boards office.

A. Active Members

Active membership in the Special Forces Pension Plan increased from 2,099 at March 31, 1980 to 2,600 as at March 31, 1990. The following graph shows the relative changes from 1980 through 1990:



B. Pensions in Payment

The number of pensions in payment increased from 15 at March 31, 1980 to 444 as at March 31, 1990. The graph on the previous page illustrates the relative increases.

The average pension in payment was $1,240 per month on March 31, 1981 and increased to $2,294 per month for pensioners and $1,407 per month for surviving spouses on March 31, 1990.

C. Cash Flow Summary

The graph below reveals that receipts were $11,922,205 in fiscal year 1980/81 and increased to $17,696,000 in fiscal year 1989/90. Payments increased from $1,036,656 in fiscal year 1980/81 to $12,362,000 in fiscal year 1989/90.